

AGREEMENT NO. _____

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
TRANSPORTATION POWER, INC.

THIS AGREEMENT is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Executive Director of the Harbor Department ("Executive Director"), and TRANSPORTATION POWER, INC., a California corporation, located at 13000 Danielson Street, Suite D, Poway, California 92064 ("GRANTEE").

WHEREAS, the City of Los Angeles Harbor Department ("Department" or "Port") and the City of Long Beach Harbor Department created the Technology Advancement Program ("TAP") as part of the Clean Air Action Plan ("CAAP") in order to accelerate the verification or commercial availability of new, clean technologies that are applicable to the port industry and that result in significant reductions of diesel particulate matter, nitrogen oxides, sulfur oxides and other pollutants; and

WHEREAS, the TAP provides grant funding to port-related technology vendors in order to assist in identifying, evaluating and demonstrating new and emerging emissions reduction technologies and strategies that may result in new control measures, alternatives to existing strategies or as additional mitigation options under the CAAP; and

WHEREAS, the TAP Committee has reviewed and approved funding for GRANTEE'S proposal which is a demonstration project for the integration, testing and operation of battery-electric drayage trucks in a port environment;

NOW, THEREFORE, in consideration of the forgoing recitals, the parties agree as follows:

I. AUTHORIZED REPRESENTATIVES TO RECEIVE NOTICES

A. The representatives of the respective parties who are authorized to receive notices for this Agreement are:

Mike Simon, President and CEO
Transportation Power, Inc.
13000 Danielson Street, Suite D
Poway, CA 92604
Tel: (858) 248-4255
mike@transpowerusa.com

Teresa Pisano
Environmental Specialist
Port of Los Angeles
425 South Palos Verdes Street

San Pedro, CA 90731
Tel: (310) 732-3057
tpisano@portla.org

B. Formal notices, demands, requests and communications given by either party shall be made in writing to the authorized representatives set forth above.

C. If the name or address designated above is changed, written notice shall be given to the other party within five (5) working days of said change.

II. SERVICES TO BE PERFORMED BY GRANTEE

A. GRANTEE shall, to the satisfaction of the City, obtain those professional, expert and technical services and materials necessary to procure, integrate and test electric drive systems in drayage trucks operating within the Port of Los Angeles. See Exhibit A.

B. During the term of this Agreement, GRANTEE shall submit a written request to, and obtain written approval from, the Executive Director or his or her designee to change or modify the Scope of Work described in Exhibit A and to change or add to the proposed demonstration truck operator in Exhibit B. Changes or modifications to Exhibit A or Exhibit B that are not approved and accepted in writing by the Executive Director or his or her designee shall not be eligible for reimbursement and shall be considered a breach of this Agreement. In the event additional truck operators agree to participate in this demonstration project, participation shall be documented through participation letters provided to the City, subject to approval by the Executive Director pursuant to this section, and copies of said letters filed with the Harbor Department's Commission Office and the Los Angeles City Attorney Office, Harbor Division.

III. SERVICES TO BE PERFORMED BY CITY

A. City shall reimburse GRANTEE for PROJECT costs incurred in accordance with the terms of this Agreement.

B. At any time during the term of this Agreement, and upon ten (10) days written notice to GRANTEE, City shall have the right to review PROJECT documentation for the purpose of verifying that PROJECT milestones have been completed and that the PROJECT is being conducted in accordance with the terms of this Agreement.

C. Unless set forth herein, City shall not be obligated to provide assistance to GRANTEE to assure completion of PROJECT as required herein.

IV. EFFECTIVE DATE AND TERM OF THE AGREEMENT

This Agreement shall be in full force and effect commencing from the date of execution by the Executive Director and shall continue until the earlier of the following occurs:

1. Two (2) years have lapsed from the effective date of this Agreement; or
2. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to GRANTEE ten (10) days' written notice of its election to cancel and terminate this Agreement; or
3. GRANTEE has completed the PROJECT and the City has made final payment pursuant to the requirements of the Agreement.

V. COMPENSATION

A. The grant award is calculated based upon the estimated expenses of the PROJECT as reported by GRANTEE. For the satisfactory performance of the work required by this Agreement, City shall reimburse GRANTEE an amount not-to-exceed Three Hundred Thousand Dollars (\$300,000), and in accordance with the payment milestones in Exhibit A.

Expenses incurred above this amount shall not be reimbursed, unless the parties enter into a written amendment to this Agreement and the same is approved by Executive Director or the Board, in accordance with the Los Angeles City Charter.

B. GRANTEE shall submit itemized invoices in quadruplicate to City upon the completion of each task set corresponding to a payment milestone in Exhibit A. Each such invoice shall be signed by GRANTEE and shall include the following certification:

"I certify under penalty of perjury that the above bill is true and correct according to the terms of Agreement No. _____ and that payment has not been received.

(Grantee's Signature)

C. GRANTEE must include on the face of each itemized invoice submitted for payment its Los Angeles Business Tax Registration Certificate number. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director, or his or her designee, prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, audited and paid.

GRANTEE shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, receipts, payrolls, and time sheets. The City may require, and GRANTEE shall provide, all documents reasonably required

to determine whether amounts on the invoice are allowable expenses under this Agreement. GRANTEE is not required to submit support for direct costs items of \$25 or less.

D. Reimbursement is contingent upon GRANTEE complying with the Scope of Work and submission of reports in accordance with the requirements of this Agreement, and the approval of same by the Executive Director, or his or her designee, in accordance with the requirements of this Agreement.

E. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section
Harbor Department, City of Los Angeles
P.O. Box 191
San Pedro, CA 90733-0191

VI. TERMINATION

A. City in its sole discretion may terminate and cancel all or any part of this Agreement for any reason upon giving to GRANTEE ten (10) days notice in writing of its election to cancel and terminate this Agreement. If such termination and cancellation occurs, GRANTEE shall be entitled to reimbursement for expenses incurred to the date of termination and for which reports and invoices have been submitted in accordance with the terms of this Agreement.

B. In the event that GRANTEE seeks early termination of this Agreement prior to the termination date for any reason, or no reason whatsoever, GRANTEE shall submit a written request to the City. Department staff shall submit GRANTEE's written request for early termination to the Board for review. In the event that City accepts GRANTEE's request for early termination, GRANTEE shall reimburse the City pursuant to Section VI.D of this Agreement.

C. In the event that facts available to the Department indicate that GRANTEE has breached any term of this Agreement prior to the end of the Agreement term, the Executive Director shall submit the reasons for the breach to the Board for its determination and concurrence that GRANTEE has breached the Agreement. In the event that City determines that GRANTEE has breached the Agreement, GRANTEE shall reimburse the City pursuant to Section VI.D of this Agreement.

D. In the event this Agreement is terminated pursuant to Sections VI.B or VI.C, GRANTEE shall reimburse City for all monies paid to the GRANTEE. City shall notify GRANTEE in writing the amount of money that GRANTEE owes to City and GRANTEE shall reimburse the City within sixty (60) days of said written notification.

E. This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of

funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. GRANTEE is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although GRANTEE is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, GRANTEE agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60 day period. GRANTEE is responsible for maintaining all insurance and bonds during this 60 day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

VII. ACCEPTABILITY OF WORK

The City shall decide any and all questions that may arise as to the quality or acceptability of the work performed by GRANTEE under this Agreement, including errors and omissions, and as to the amount of reimbursement due to GRANTEE. Decisions shall be final, and the City shall have authority to enforce and make effective such decisions and orders with respect to the performance of this Agreement.

GRANTEE understands that no board member, officer, agent or employee of City has the authority to require work outside this Agreement other than is allowed by this Agreement.

VIII. EMISSION REDUCTION CREDITS (ERCs)

Where any Emission Reduction Credits may be generated by the PROJECT, they shall belong to the City and cannot be used by GRANTEE for any purpose.

IX. ASSIGNMENT

GRANTEE shall not assign, sell, license or otherwise transfer this Agreement or any of the rights granted by this Agreement without the prior written consent of the City. Any attempted transfer or assignment without the prior written consent of the Cities shall

be void and confer no rights whatsoever upon a transferee or assignee. Any attempted transfer or assignment without the prior written consent of the Cities shall be considered a breach of this Agreement and the City may proceed with termination of the agreement under Section VI.

Any request for consent to an assignment shall be made in writing, accompanied by information relevant to the City's determination as to the financial and operational responsibility and appropriateness of the proposed assignee, including but not limited to any modifications to the PROJECT Scope of Work, if any. GRANTEE agrees to provide to the City such other or additional information and/or documentation pertaining to the requested consent as may be reasonably requested by the City.

X. INDEMNIFICATION AND INSURANCE

A. Indemnification

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, GRANTEE undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including GRANTEE's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by GRANTEE or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

B. Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting GRANTEE's insurance documents. GRANTEE's insurance broker or agent shall register with the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on GRANTEE's behalf.

C. General Liability Insurance

GRANTEE shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not

available) within GRANTEE's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of GRANTEE. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of GRANTEE's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

D. Automobile Liability Insurance

GRANTEE shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within GRANTEE's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

E. Workers' Compensation and Employer's Liability

GRANTEE shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that GRANTEE shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. GRANTEE shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of GRANTEE, and for all employees of any subcontractor or other vendor retained by GRANTEE.

F. Carrier Requirements

All insurance which GRANTEE is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

G. Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

H. Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to GRANTEE.

I. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, GRANTEE shall direct their insurance broker or agent to submit to the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If GRANTEE neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be deducted from the next payment due GRANTEE.

J. Right to Self-Insure

Upon written approval by the Executive Director, GRANTEE may self-insure if the following conditions are met:

1. GRANTEE has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, GRANTEE must have a formal resolution of its board of directors authorizing self-insurance.
2. GRANTEE agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full

insurance with respect to types of coverage and minimum limits of liability required by this Agreement.

3. GRANTEE agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. GRANTEE agrees that any insurance carried by Department is excess of GRANTEE's self-insurance and will not contribute to it.
5. GRANTEE provides the name and address of its claims administrator.
6. GRANTEE submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
7. GRANTEE agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. GRANTEE has complied with all laws pertaining to self-insurance.

K. Accident Reports

GRANTEE shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if GRANTEE's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to GRANTEE, its officers or managing agents.

XI. COMPLIANCE WITH APPLICABLE LAWS

GRANTEE shall, at all times, in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, enacted and adopted by federal, state, regional, municipal or other governmental bodies, departments or offices thereof. In addition to the foregoing, GRANTEE shall comply immediately with any and all orders or directions issued by the City under authority of any such law, statute, ordinance, rule or regulation.

XII. INDEPENDENT CONTRACTOR

GRANTEE in the performance of the work required by this Agreement is an independent contractor and not an agent or employee of the City. GRANTEE shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

XIII. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and Department. The parties agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

XIV. TRADEMARKS, COPYRIGHTS AND PATENTS

GRANTEE agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, costs, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by GRANTEE in the performance of this Agreement.

XV. OWNERSHIP OF DOCUMENTS

All data, documents, reports or other materials, copies of working papers which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement shall become the property of the City. The City reserves the right to use, duplicate, disclose in whole or in part in any manner for any purpose whatsoever all said data, documents, reports or other materials, and to authorize others to do so.

XVI. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. GRANTEE declares that its authorized Taxpayer Identification Number (TIN) is 27-3558766. No payments will be made under this Agreement without a valid TIN.

XVII. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This section provides

that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Los Angeles Harbor Department ("Department"). See Exhibit C.

XVIII. AFFIRMATIVE ACTION

GRANTEE, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, natural origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of the Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit D.

XIX. PROPRIETARY INFORMATION

GRANTEE may not disclose to any party without City's permission any information developed pursuant to this Agreement. The Department will, however, have the right to disclose the information as it determines appropriate considering the nature of the information, its use and the laws applicable to the Department.

XX. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 3, 1999, agreeing to adopt the provisions of the Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. GRANTEE shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate the Agreement and otherwise pursue legal remedies that may be available.

XI. WAGE AND EARNING ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

GRANTEE and/or any subcontractor are obligated to fully comply with all applicable state and federal employment reporting requirements for GRANTEE and/or subcontractor's employees.

GRANTEE and/or subcontractor shall certify that the principal owner(s) are in compliance with any Wage and Earning Assignment Orders and Notices of Assignment applicable to them personally. GRANTEE and/or subcontractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code § 5230 et seq. GRANTEE or subcontractor will maintain such compliance throughout the term of the Agreement.

XXII. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. GRANTEE shall comply with the policy wherever applicable. Violation of the policy shall entitle the City to terminate any Agreement with GRANTEE and pursue any and all other legal remedies that may be available. See Exhibit E.

XXIII. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tideland Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929, (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. GRANTEE agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

XXIV. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

XXV. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

XXVI. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

XXVII. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

XXVIII. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

XXIX. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

XXX. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

XXXI. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the

terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Date: _____

By _____
Executive Director

Attest: _____
Secretary

TRANSPORTATION POWER, INC.

Date: _____

By _____

Type/print Name and Title

Attest _____

Type/print Name and Title

APPROVED AS TO FORM

_____, 2013
CARMEN A. TRUTANICH, City Attorney

By _____
HEATHER M. McCLOSKEY, Deputy

| | |
|-------------------------------|-----------|
| Account# | W.O. # |
| Ctr/Div# | Job Fac.# |
| Proj/Prog# | |
| Budget FY: | Amount: |
| | |
| | |
| TOTAL | |
| For Acct/Budget Div. Use Only | |
| Verified by: | _____ |
| Verified Funds Available: | _____ |
| Date Approved: | _____ |

EXHIBIT A
PROJECT SCOPE AND PAYMENT SCHEDULE
ELECTRIC DRAYAGE PRE-COMMERCIAL DEMONSTRATION (EDPCD)

The primary goal of the Transpower's Electric Drayage Pre-Commercial Demonstration (EDPCD) project is to evaluate and demonstrate the operation of electric trucks in drayage service. Seven Navistar International ProStar trucks will be procured and integrated with the Transportation Power Inc.'s (TransPower) ElecTruck™ drive systems which will then be demonstrated in drayage service by one or more drayage truck operators for periods of at least one year. TTSI has agreed to participate and is likely to operate at least four of the seven trucks (See Exhibit B).

Project administration and drive system design will be funded by the Department of Energy, the California Energy Commission, and TransPower. TAP funding will be applied to fund the following key objectives which are encompassed in the following tasks:

| Task/Payment Milestone | Description | Approximate Timing |
|--|--|---------------------------|
| Task 1 - Drive System Integration | | |
| Task #1.1 | Procure first two International ProStar™ truck chassis | 6/30/2013 |
| Payment Milestone #1* | Completion of Task #1.1 Payment: \$70,000 To receive payment, grantee must provide proof of purchase for two International ProStar truck chassis (Trucks 1 and 2). | |
| Task #1.2 | Complete integration of two electric trucks acquired under Task 1.1 | 9/30/2013 |
| Payment Milestone #2* | Completion of Task #1.2 Payment: \$70,000 To receive payment, grantee must provide supporting documentation for the complete integration of ElecTruck™ drive systems into Trucks 1 and 2. | |
| Task #1.3 | Complete integration of two additional electric trucks (Trucks 3 and 4). | 12/31/2013 |
| Payment Milestone #3* | Completion of Task #1.3 Payment: \$50,000 To receive payment, grantee must provide supporting documentation for the complete integration of ElecTruck™ drive systems into Trucks 3 and 4. | |
| Task #1.4 | Complete integration of three additional electric trucks (Trucks 5, 6, and 7). | 3/31/2014 |
| Task #1.5 | Complete Department of Transportation (DOT) Certification | |
| Payment Milestone #4* | Completion of Tasks #1.4 and #1.5 Payment: \$50,000 To receive payment, grantee must provide supporting | |

| | | |
|--|---|------------|
| | documentation for the complete integration of ElecTruck™ drive systems into Trucks 5, 6, and 7. | |
| Task #2 – Drayage Service Demonstration | | |
| Task #2.1 | Pre-demonstration Testing Complete pre-demonstration testing of vehicles prior to operating in port drayage. Submit written summary of vehicle performance including any necessary modifications. Written summary is subject to approval by Port staff prior to commencing drayage service demonstration. | |
| Task #2.2 | Drayage Service Demonstration Complete first six months of drayage service demonstration. (TAP fund will partially cover the cost of data analysis and preparation of Interim Electric Drayage Demonstration Report (IEDDR)). | 6/30/2014 |
| Payment Milestone #5* | Completion of Task #2.1 and #2.2 Payment: \$30,000 To receive payment, grantee must provide supporting documentation for the data analysis and a copy of IEDDR prepared for the six months of drayage service demonstration. | |
| Task #2.3 | Drayage Service Demonstration Complete first year of drayage service demonstration. (TAP fund will partially cover the cost of updating IEDDR and preparing draft Final Report for EDPCD). | 12/31/2014 |
| Payment Milestone #6* | Completion of Task #2.3 Payment: \$30,000 To receive payment, grantee must provide a copy of updated IEDDR and a copy of draft final report for EDPCD following first year of drayage service demonstration. | |

* Invoices with detailed supporting documentation must be submitted at each payment milestone to receive payment.

These tasks and milestones were derived from the Statement of Work prepared by TransPower (attached hereto) for the overall project which goes beyond the TAP funded portion of the project.

**TRANSPower ELECTRIC DRAYAGE PRE-COMMERCIAL
DEMONSTRATION (EDPCD) PROJECT**

| TASK NO. | TASK DESCRIPTION | TAP PAYABLE MILESTONE | COMPLETION DATE | PAYABLE AMOUNT |
|-----------------|--|--|------------------------|-----------------------|
| 1 | Administration | None <i>Use of TAP funds: None, this task will be fully funded by the CEC and DOE</i> | 12/31/2014 | N/A |
| 2 | Drive System Design | None <i>Use of TAP funds: None, this task will be fully funded by the CEC and DOE</i> | 5/15/2013 | N/A |
| 3 | Drive System Integration | Procure First Two International ProStar™ Truck Chassis <i>Use of TAP funds: Cover approximately 1/3rd of the cost of acquiring two trucks</i> | 6/30/2013 | \$70,000 |
| 3 | Drive System Integration | Complete Integration of Two Electric Trucks <i>Use of TAP funds: Cover approximately 8% of TransPower's cost for converting Trucks 1 and 2*</i> | 9/30/2013 | \$70,000 |
| 3 | Drive System Integration | Complete Integration of Four Electric Trucks <i>Use of TAP funds: Cover approximately 6% of TransPower's cost for converting Trucks 3 and 4*</i> | 12/31/2013 | \$50,000 |
| 3 | Drive System Integration | Complete Integration of Seven Electric Trucks <i>Use of TAP funds: Cover approximately 5% of TransPower's cost for converting Trucks 5, 6, and 7*</i> | 3/31/2014 | \$50,000 |
| 4 | Drayage Service Demonstration/Data Collection and Analysis | Complete First Six Months of Drayage Service Demonstration <i>Use of TAP funds: Analyze data and prepare Interim Electric Drayage Demonstration Report (IEDDR)</i> | 6/30/2014 | \$30,000 |
| 4 | Drayage Service Demonstration/Data Collection and Analysis | Complete First Year of Drayage Service Demonstration <i>Use of TAP funds: Update IEDRR and prepare Draft Final Report for EDPCD project</i> | 12/31/2014 | \$30,000 |
| | | TOTAL | | \$300,000 |

* Estimated recurring cost of truck conversion, excluding base truck chassis

STATEMENT OF WORK

TASK 1 ADMINISTRATION

Task 1.1 Support Kick-Off Meeting(s)

TransPower shall participate in that kick-off meeting when it is scheduled, to formally launch each project.

Task 1.2 Critical Project Review (CPR) Meetings

TransPower shall prepare a CPR Report for each CPR that discusses the progress of their project toward achieving its goals and objectives.

Task 1.3 Final Meeting

TransPower shall participate in Final Meetings as scheduled by the CEC, DOE, and Ports.

Task 1.4 Monthly Progress Reports

TransPower shall Prepare a Monthly Progress Report which summarizes all project activities conducted by the Sub-Recipient for the reporting period, including an assessment of the ability to complete the project within the current budget and any anticipated cost overruns.

Task 1.5 Final Report

TransPower shall prepare a Final Report is to assess the project's success in achieving its goals and objectives, advancing science and technology, and providing energy-related and other benefits to California.

Task 1.6 Outreach and Commercialization

TransPower shall take steps to commercialize the ElecTruck™ product, including a variety of outreach and educational activities. The ultimate outcome sought by these efforts will be to secure an initial order for 100 or more trucks using the ElecTruck™ drive system by the conclusion of the EDPCD Project in December 2014.

TASK 2 DRIVE SYSTEM DESIGN

The goal of this task is to refine the design of the ElecTruck™ drive system, incorporating any design modifications shown to be needed as a result of testing of the current prototype vehicle. This task will be performed in parallel with testing of TransPower's second prototype electric truck in simulated drayage service, which will provide additional opportunities to benefit from prior experience. The design will be fully documented to assure repeatability in a commercial environment.

TransPower shall:

- Identify ElecTruck™ design improvements required or desired, based on testing of two pre-existing prototype electric drayage trucks

- Conduct an assessment of drive system cost reductions that could be achieved with additional design modifications and document its results in a Design Cost Reduction Assessment report
- Modify and document the updated ElecTruck™ design in accordance with the conclusions of the preceding subtasks
- Conduct a Critical Product Review (CPR #1) to review the updated drive system design

Products:

- Design Cost Reduction Assessment Report
- Updated design package
- CPR #1 presentation and report

TASK 3 DRIVE SYSTEM INTEGRATION

The goal of this task is to install ElecTruck™ drive systems into seven Navistar International ProStar™ trucks. The Navistar vehicles and all purchased components will be delivered to TransPower's Poway facility, where subsystems will be built and validated, then installed into the vehicles.

TransPower shall:

- Procure seven trucks from Navistar
- Procure all materials required to build and install seven ElecTruck™ drive systems
- Assemble ElecTruck™ subsystems:
 - Motive Drive Subsystem
 - Inverter-Charger Subsystem
 - Energy Storage Subsystem
 - Electrically-Driven Accessory Subsystem
 - Vehicle Control Subsystem
 - Vehicle Integration Subsystem
- Install ElecTruck™ subsystems, components, and parts into the seven Navistar trucks
- Perform basic subsystem and component-level testing to assure proper functionality
- Conduct a Critical Product Review (CPR #2) to review the completed vehicles

Products:

- Seven completed Navistar trucks, repowered with the ElecTruck™ drive system
- Updated ElecTruck™ integration drawings and procedures
- Updated ElecTruck™ Bill of Material (BOM)
- CPR #2 presentation and report

TASK 4 DRAYAGE SERVICE DEMONSTRATION/DATA COLLECTION AND ANALYSIS

The goal of this task is to perform initial road testing of each completed vehicle to validate its basic operability, then deliver the completed trucks to TTSI for testing in actual drayage operations. TransPower will train TTSI operations and maintenance personnel so they can handle as many routine maintenance tasks as possible. If required, TransPower will hire and train an on-site field engineer or service technician to assist TTSI operations and maintenance personnel. This task will also involve collection of operating data from the five trucks and performance of independent compilation and analyses of this information. CALSTART will lead this “Data Collection” subtask and TransPower and TTSI will assist in the data collection, using data logging equipment installed as standard components of the ElecTruck™ drive system.

TransPower shall:

- Perform initial road testing of the seven completed electric drayage trucks and make whatever adjustments are necessary prior to delivery to TTSI
- For each truck, achieve at least one week of continuous trouble-free test operations, under realistic operating conditions, before delivery
- To the extent required by law, self-certify that all truck modifications are in accordance with Federal Motor Vehicle Safety Standards (FMVSS)
- Deliver the seven completed electric drayage trucks to TTSI
- Provide training and documentation to TTSI to assist their operations and maintenance personnel
- Enter trucks into service and provide on-site support as required
- Use onboard data loggers to record data during operation of the seven electric drayage trucks
- Conduct basic performance tests of the trucks, including, at minimum, acceleration, top speed, load-carrying capability, and hill-climbing ability
- Support collection and analysis of data on miles driven, energy consumed, mean time between failures (MTBF), cost of repairs, and other parameters as necessary to characterize the efficiency and economy of the trucks
- Support preparation of an independently reviewed Electric Drayage Demonstration Results Report (EDDRR) documenting the results of the above subtasks

Products:

- ElecTruck™ Operator’s Manual
- ElecTruck™ Maintenance Manual
- Concise report documenting results of initial road testing
- Interim Electric Drayage Demonstration Results Report (IEDDRR)
- Electric Drayage Demonstration Results Report (EDDRR)

FUNDING SOURCES

The table below provides the most recent estimates of project costs, broken down by the four tasks just described and by funding source. Estimates are as of March 6, 2014.

| 7-Vehicle Scenario | Funding Source | | | | TOTAL |
|------------------------------|------------------|------------------|----------------|----------------|------------------|
| | CEC | DOE | TAP | TransPower | |
| Task 1, Administration | 87,909 | 43,954 | | 4,000 | 135,863 |
| Task 2, Drive System Design | 200,893 | 55,056 | | 15,000 | 270,949 |
| Task 3, Vehicle Integration | 1,897,933 | 760,219 | 240,000 | 586,443 | 3,484,595 |
| Task 4, Demo/Data Collection | 109,432 | 282,841 | 60,000 | 49,536 | 501,809 |
| TOTAL | 2,296,167 | 1,142,070 | 300,000 | 654,979 | 4,393,216 |

For questions relating to this document, please contact:

Mike Simon
President & CEO
TransPower
13000 Danielson Street, Suite D
Poway, CA 92064
(858) 248-4255
mike@transpowerusa.com



Clean Exempt Trucks Now

Total Transportation Services, Inc.

September 20, 2012

Michael Simon
President & CEO
TransPower
13000 Danielson Street, Suite D
Poway, California 92064

Subject: TransPower Proposal for "Electric Drayage Demonstration" Project (EDD)

Dear Mr. Simon:

This letter is to reconfirm the commitment of Total Transportation Services, Inc. (TTSI) to support TransPower's "Electric Drayage Pre-Commercial Demonstration" (EDPCD) Project. TTSI has been monitoring TransPower's progress under your "Vertically Integrated Facility for Electric Truck Manufacturing" (VIFET) project since 2011, and we are impressed with the electric truck technologies, components, and integration methods you have been developing under this project. We agree that the EDPCD, which we understand is already partially funded by the California Energy Commission and U.S. Department of Energy (DOE), can build logically on TransPower's achievements to date.

TTSI is excited to be a part of TransPower's EDPCD project, which will result in the manufacturing of 4-7 battery-electric drayage trucks and the placement of them into service at the Ports of Los Angeles and Long Beach. The EDPCD project will pick up where the VIFET Project leaves off, addressing a critical need for alternative fueled vehicles at the L.A./Long Beach ports. TTSI will support the EDD Project by placing the pre-commercial demonstration trucks into drayage service starting in mid-2013, and assisting TransPower, the DOE, and CALSTART in collecting and analyzing data from the vehicles.

TTSI supports TransPower's efforts to acquire additional co-funding for the EDPCD project from the Ports of Long Beach and Los Angeles, which will help put this project on the best possible financial footing. If the electric trucks perform as expected and can show favorable economics, TTSI intends to move forward with our investment banker, Capello Group, in efforts to finance the purchase of as many as 100 electric trucks using TransPower's ElecTruck™ technology. Accordingly, we hope the Ports recognize the high value of the work TransPower and TTSI are proposing to perform under the EDPCD Project, and elect to support our Team in perfecting and commercializing this promising technology.

Sincerely,

A handwritten signature in black ink, appearing to read "Vic LaRosa", written over a horizontal line.

Vic LaRosa
President & CEO
Total Transportation Services, Inc.

EXHIBIT C

BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

The City of Los Angeles Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal Code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the office listed below, or log on to www.lacity.org/finance to download the business tax registration application.

MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101

(213) 473-5901

EXHIBIT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

EXHIBIT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it

EXHIBIT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;

EXHIBIT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

EXHIBIT E

Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

(c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) **Mandatory Contract Provisions Pertaining to Equal Benefits.** Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.